IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 3490 of 2006()

ST.1716/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, TRIVANDRUM

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PETITIONER: ACCUSED:

SIVAPRASAD, S/O. VIDHYADHARAN,
PRASAD MANDIRAM, VANDIPPURA,
KOVUR P.O., CHEMMARUTHI VILLAGE,
VARKALA.

BY ADV. SRI.K.HARILAL
SRI.R.GOPAN

RESPONDENTS: COMPLAINANT:

STATE BANK OF TRAVANCORE,
K.S.E.B. ADMINISTRATIVE OFFICE COMPLEX BRANCH
PATTOM, THIRUVANANTHAPURAM, REPRESENTED BY
ITS BRANCH MANAGER SANKARA NARAYANAN POTTI.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.3490 OF 2006

Dated this the 30th day of November, 2006

ORDER

The petitioner is the 3rd accused in a prosecution, inter alia, under Secs.420 and 120B of the IPC. Cognizance has been taken against him on the basis of a private complaint filed by the respondent. Altogether there are three accused persons. The complainant/respondent is a Bank. The 1st respondent is a loanee. The 2nd respondent is a guarantor who allegedly deposited his title deeds for creation of a mortgage. The property measured is 4.122 cents. The petitioner/3rd accused in collusion with the co-accused had allegedly defrauded the complainant/Bank. Notwithstanding the deposit of title deeds, collusive documents have been created to make it appear that the 3rd respondent has purchased the property. This, in short, is the crux of the allegation.

2. The learned counsel for the petitioner submits that there is resort to the criminal adjudicatory process with oppressive and questionable intention. The petitioner is not liable to suffer the trauma of continued prosecution against

him. It is prayed that powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings against him.

3. Though notice was ordered to the respondent, the respondent has not entered appearance so far. I have heard the learned counsel for the petitioner. When the matter came up for extension of stay, I am satisfied that the matter can be disposed of without waiting for appearance of the respondent.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction which is sought to be invoked. The premature termination of the criminal proceedings can in an appropriate case certainly be brought under Sec.482 of the Cr.P.C. But in every case where the accused may be entitled for an acquittal or discharge, it is not necessary or proper for this Court to invoke the powers under Sec.482 of the Cr.P.C. Where the criminal adjudicatory process is initiated against an accused person without sufficient justification, it is not necessary that this Court should in every such case invoke the powers under Sec.482 of the Cr.P.C. Ordinarily and normally the indictee must approach the Magistrate who under the Code is invested with sufficient powers to bring about premature termination of the proceedings when proceedings are initiated without

sufficient justification. At the early stage when process is issued, the indictee is not heard and as soon as he enters appearance, it is open to him to claim discharge under the relevant provisions of law. This is not to say that in an exceptional case in the interests of justice this Court cannot invoke the powers under Sec.482 of the Cr.P.C. even when the ordinary and normal remedy of termination and discharge exists in favour of the indictee. But in the facts and circumstances of this case, I am certainly convinced that there are no circumstances justifying the invocation of the jurisdiction under Sec.482 of the Cr.P.C. The petitioner who, it is submitted, has already entered appearance before the learned Magistrate, must claim discharge under Sec.245(1) or Sec.245(2) of the Cr.P.C. The learned Magistrate, needless to say, must consider such claim for discharge on merits in accordance with law expeditiously.

5. The learned counsel for the petitioner submits that if unnecessary insistence of personal appearance of the petitioner were made, that would work out great prejudice, hardship and loss to the petitioner. It is for the petitioner to apply for exemption and in the facts and circumstances of this case, I have no hesitation to observe that such application, if filed, must be

favourably considered and allowed by the learned Magistrate. Insistence on personal appearance of the petitioner need not be made until the learned Magistrate takes a decision that charges are liable to be framed against the petitioner.

6. With the above observations, this Crl.M.C. is dismissed.

(R. BASANT, JUDGE)

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